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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**
11

12 **WILLIAM GRIVAS, individually and**
13 **on behalf of all others similarly situated,**

14 **Plaintiff,**

15 **v.**
16

17 **METAGENICS, INC.,**

18 **Defendant.**
19
20

Case No.: SACV 15-01838-CJC-DFM

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

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1 On May 6, 2019, the unopposed motion brought by Plaintiff William Grivas for
2 Final Approval of Class Action Settlement came on for hearing. After considering the
3 papers and the arguments of counsel, including the Class Action Settlement Agreement
4 and Release (“Settlement Agreement”), and good cause appearing, **IT IS HEREBY**
5 **ORDERED:**

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7 1. For purposes of this Order, the Court adopts and incorporates all definitions
8 set forth in the Settlement Agreement unless a different definition is set forth in this
9 Order.

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11 2. The Court has reviewed the Declaration of Stephanie Molina in support of
12 Plaintiff’s Motion for Final Approval of Class Settlement, and finds that Class Notice has
13 been disseminated to the Class in compliance with the Court’s Preliminary Approval
14 Order and that the Notice Program provided the best notice to the Class practicable under
15 the circumstances, fully satisfied due process, met the requirements of Rule 23 of the
16 Federal Rules of Civil Procedure, and complied with all other applicable law. The Court
17 further finds that notice provisions of 28 U.S.C. § 1715 were complied with in this case.

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19 3. The Court has not received any objections to the Settlement. The absence of
20 any objections bars any appeal. *See* Newberg on Class Actions § 14:13 (5th ed.) (“[I]t is
21 equally clear that a class member who did not object in the district court cannot pursue an
22 appeal. Indeed, she has nothing to appeal because she waived her rights by not objecting
23 below.”); *In re UnitedHealth Grp. Inc. S’holder Derivative Litig.*, 631 F.3d 913, 917 (8th
24 Cir. 2011) (class member must file a timely and proper objection with the district court
25 before appealing a settlement agreement); *Aichele v. City of L.A.*, 2015 WL 12732003, at
26 *6 (C.D. Cal. Sept. 9, 2015) (“Since there have been no objections to the Settlement,
27 there can be no appeals taken.”).

1 4. No Class member has requested to speak at the Final Fairness Hearing.

2
3 5. The Court finds that the requirements of Rule 23(e) of the Federal Rules of
4 Civil Procedure and other laws and rules applicable to final settlement approval of class
5 actions have been satisfied, and the Court approves the settlement of this Action as
6 memorialized in the Settlement Agreement, which is incorporated herein by reference, as
7 being fair, just, reasonable, adequate, in the best interests of the Class and its members,
8 and the full and final resolution of the Class's claims.

9
10 6. The release set forth in the Settlement will become binding and effective on
11 all Class members upon the Effective Date, which under Section II.D will be the date of
12 entry of the Final Approval Order and Judgment of the Final Approval Order. To avoid
13 ambiguity, these releases read as follows:

14 Section V.B. **Claims Members' Release.** Upon entry of the
15 Final Order and Judgment following the Fairness Hearing, all Class
16 Members who have not timely requested exclusion pursuant to
17 Section IV.G., and each of their successors, assigns, heirs, and
18 personal representatives, release and forever discharge the Released
19 Persons from all manner of claims, including all actions, causes of
20 action, claims, demands, rights, suits, as well as remedies, including
21 obligations, debts, contracts, agreements, promises, liabilities,
22 damages, charges, penalties, losses, costs, expenses, and attorneys'
23 fees, (a) as they were alleged in the complaints, including those
24 based on alleged violations of the Unfair Competition Law, or (b)
25 that arise or could have arisen from the factual allegations in
26 Plaintiff's First Amended Complaint.
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1 This Settlement Agreement is made and given subject to a waiver of
2 the provisions of California Civil Code Section 1542 which
3 provides:

4 A general release does not extend to claims which the
5 creditor does not know or suspect to exist in his or her favor
6 at the time of executing the release, which if known by him
7 or her must have materially affected his or her settlement
8 with the debtor.
9

10 Although the releases granted under this Settlement Agreement are
11 not general releases, Plaintiff, on behalf of himself and of all Class
12 Members, nonetheless expressly acknowledge that Plaintiff and the
13 Class Members are waiving the protections of section 1542 as to the
14 Class Members' Release only.
15

16 7. The Plan Administrator is hereby directed to implement and carry out the
17 Settlement Agreement in accordance with the terms and provisions thereof, including the
18 settlement and distribution plan, as described in Section III and elsewhere in the
19 Settlement Agreement.
20

21 8. Class Counsel and the Class Representative fairly and adequately
22 represented the interests of the Class members. The Court finds that Class Counsel's
23 request for \$325,000 in attorneys' fees and litigation costs, which represents 25% of the
24 total recovery, is fair and reasonable, given the high level of risk involved, the result
25 achieved, the high quality of the legal representation, the duration of this case, the
26 novelty of their claim, and the complexity of the issues in this Court and the Court of
27 Appeals. In addition, this Court has cross-checked the fee award against Class Counsel's
28 combined lodestar and finds that the fee award represents a fee reduction in their lodestar,

1 or a negative multiplier, further speaking to the reasonableness of the request.
2 Accordingly, Class Counsel is hereby awarded \$325,000 for fees and costs.
3

4 9. Defendant shall make the payments specified in Section III, paragraphs B
5 through H, of the Settlement Agreement, within the deadlines specified therein (*i.e.*, 15
6 days after the Effective Date of the Settlement Agreement).
7

8 10. Payment for the award of attorneys' fees and costs in all or any part of the
9 amount to be received by the attorneys may be deferred (such as in the case of an annuity,
10 a structured settlement, or periodic payments). Any such agreement as to the time and
11 manner of paying the attorneys' fees shall be irrevocable.
12

13 11. The fees and expenses shall initially be paid to Nicholas & Tomasevic, LLP
14 and distributed or allocated among Class Counsel by Class Counsel Craig Nicholas in a
15 manner consistent with counsel's prior agreements regarding the same, and that in a
16 good-faith judgment, reflects each firm's contribution to the institution, prosecution, and
17 resolution of the litigation.
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19 12. The Court further finds the requested service award is fair and reasonable,
20 given the time and effort expended by the Class Representative on behalf of the Class,
21 and the risk they incurred in pursuing relief on behalf of the Class. The Court awards a
22 \$5,000 service award to Plaintiff William Grivas. This award shall be distributed by
23 Defendant at the same time as the attorneys' fees and costs.
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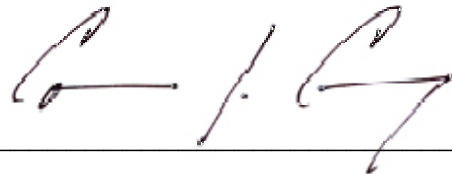
25 13. The Court further finds that the requested payment to settlement
26 administrator ILYM Group, Inc. and its stated expenses, (*see* Molina Decl. ¶ 12), are
27 reasonable and shall be paid consistent with the Settlement Agreement.
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1 14. There being no just reason for delay, the Court, in the interests of justice,
2 expressly directs the Clerk of the Court to enter this Final Order and Judgment, and
3 hereby decrees that, upon entry, it be deemed a Final Judgment.
4

5 15. Without affecting the finality of this Judgment in any way, this Court hereby
6 retains continuing jurisdiction over (a) implementation and administration of the
7 Settlement Agreement; and (b) the Parties and the Class members for the purpose of
8 construing, enforcing, and administering the Settlement Agreement and all orders and
9 judgments entered in connection therewith.
10

11 **IT IS SO ORDERED.**
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13 DATED: May 6, 2019
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A handwritten signature in dark ink, appearing to read 'C. J. Carney', is written over a horizontal line.

15 CORMAC J. CARNEY
16 UNITED STATES DISTRICT JUDGE
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